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No. 748

In the Supreme Court of the United States

OCTOBER TERM, 1932

INTERSTATE COMMERCE COMMISSION, PETITIONER

v.

UNITED STATES OF AMERICA ON THE RELATION OF J. C. CAMPBELL, R. M. CAMPBELL, J. R. CAMPBELL, C. W. AMSLER, AND HENRY AMSLER, TRADING AS THE BIRCH VALLEY LUMBER COMPANY, A PARTNERSHIP, RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF

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EDWARD M. REIDY,
For Interstate Commerce Commission.

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In the Supreme Court of the United States

No. —

INTERSTATE COMMERCE COMMISSION, PETITIONER

v.

UNITED STATES OF AMERICA ON THE RELATION OF J. C. Campbell, R. M. Campbell, J. R. Campbell, C. W. Amsler, and Henry Amsler, Trading as the Birch Valley Lumber Company, a partnership, respondents

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF

PETITION

The Interstate Commerce Commission, petitioner herein, prays that a writ of certiorari issue in accordance with the provisions of subsection (a) of Section 240 of the Judicial Code, as amended and reenacted by the Act of February 13, 1925, (c. 229, 43 Stat. 936, 938) to review a judgment of the Court of Appeals of the District of Columbia entered January 30, 1933, in a case entitled *United States of America ex rel. J. C. Campbell, et al.,*

Appellants v. *Interstate Commerce Commission, Appellee,* No. 5816. (R. 59.) That judgment reversed a judgment of the Supreme Court of the District of Columbia which had dismissed a petition for a writ of mandamus to compel the Commission to award damages for a violation of the Interstate Commerce Act, and which the Commission had declined to award on the ground that "the record will not support an award of reparation based on the undue prejudice found to exist." (R. 36.)

Question presented

Whether the writ of mandamus will lie to compel the Interstate Commerce Commission, in a proceeding in which it has taken jurisdiction and exercised the authority duly conferred upon it by statute, to make an award of reparation in favor of a complainant, where the Commission finds that such complainant has been subjected to the exaction of charges which are unduly prejudicial as to it, and concerning which charges the Commission further finds that "the record will not support an award of reparation based on the undue prejudice found to exist". (R. 36.)

Statute involved

The pertinent provisions of the Interstate Commerce Act are set forth in the appendix, *infra,* pages 18 to 23.

Statement of the case

The controversy had its inception in a complaint filed on January 11, 1927, by the Birch Valley Lumber Company, wherein it alleged that the rates charged for transporting lumber and other forest products from Tioga, W. Va., to various destinations in the United States, were and are unreasonable, and unduly prejudicial and preferential, in violation of Sections 1 and 3 of the Interstate Commerce Act. (R. 29.) In the hearings before the Commission it was shown: That the Strouds Creek & Muddlety Railroad Company, hereinafter called the S. C. & M., is a short line railroad serving Tioga and Delphi, W. Va., where the plants of the Birch Valley Lumber Company and the Delphi Lumber Company, respectively, are located (R. 30); that Tioga is 7.1 miles and Delphi 9.5 miles from Allingdale, W. Va., where the S. C. & M. connects with the Baltimore & Ohio Railroad Company (R. 30); that the S. C. & M., for performing the haul from Tioga or Delphi to Allingdale receives $15 for each car of lumber transported, which is prepaid by the shipper (R. 30); that, for rate-making purposes, the Baltimore & Ohio has divided the lumber producing territory tributary to its line into groups, Allingdale being in what is known as the Richwood group (R. 30); that the Birch Valley Lumber Company competes in the sale of its products with mills at Fenwick, Gauley Mills, Midvale, Suncrest and Pickens, W. Va., all local points on the B. & O.,

and from which the district or group rates applied (R. 30); that all points in the Richwood group either on the main line of the B. & O. or on any of its branches, receive the benefit of the group rate (R. 30), and that higher rates are exacted by the B. & O. from points on its short line connections. (R. 30.)

The Lumber Company requested the Commission to establish through routes and joint rates from Tioga and Delphi which would not exceed the district basis of rates, and asserted that because of competition it is forced to absorb the $15 charge of the S. C. & M., by reason of which fact it could not compete on as favorable terms as its competitors. (R. 29.) The record showed that for the last half of the year 1926 a total of 565 cars moved from points on the S. C. & M. to various destinations. (R. 29.)

In the Commission's accompanying report of May 29, 1928, (144 I. C. C. 419) after some discussion of the evidence introduced by the B. & O. in defense of its rates as reasonable and of the principles of law applicable in a case of this kind, it (R. 32–36) made the following ultimate finding:

> We find that the rates assailed, in so far as they apply within the United States, were not and are not unreasonable but were, are, and for the future will be unduly prejudicial to complainant and unduly preferential of its competitors in the same general origin territory to the extent that they exceeded,

> exceed, or may exceed the rates contemporaneously maintained on like traffic from the group which includes Allingdale, W. Va. *The record will not support an award of reparation based on the undue prejudice found to exist.* (Italics supplied.) (R. 36.)

On the same day, May 29, 1928, the Commission directed the carriers to cease and desist, on or before August 15, 1928, and thereafter to abstain from practicing the undue preference and prejudice found to exist, and to establish, maintain and apply regulations and practices which would prevent and avoid such undue prejudice and preference. (R. 37–42.) Upon the filing of a petition for reconsideration the Commission suspended the effective date of its order indefinitely. The petition for reconsideration was denied on November 1, 1928, and the order became effective on January 14, 1929. (R. 8.) On July 30, 1930, a petition by the Lumber Company seeking rehearing before the full Commission was filed, and on February 2, 1931, such petition was denied. (R. 9.)

The case was submitted to the Supreme Court of the District of Columbia upon the petition and exhibits thereto attached, the answer of the respondent to the petition and the demurrer to said answer. There were included as exhibits to the petition the complaint before the Interstate Commerce Commission, the report and order of the Commission, and the order of February 2, 1931, denying rehear-

ing. On October 4, 1932, said Court entered judgment overruling the demurrer and dismissing the petition. (R. 50.)

On the appeal that judgment was reversed by the Court of Appeals of the District of Columbia, (R. 53–59) the accompanying opinion holding in substance that the Commission's conclusion that the record would not support an award of reparation based on the undue prejudice found to exist was inconsistent with its findings of fact, and that, because the shipper has no other remedy, mandamus is appropriate.

Reasons for granting the petition

The reasons relied upon by the petitioner for the issuance of a writ of certiorari and upon which petitioner believes this petition ought to be granted are as follows:

1. The case involves a question of general importance;

2. The decision of the Court of Appeals of the District of Columbia is in conflict with prior decisions of that Court, and inconsistent with analogous decisions of this Court.

BRIEF IN SUPPORT OF PETITION

Opinions

The opinion rendered by the Supreme Court of the District of Columbia simply stated that the case was controlled by *Donner Steel Company* v.

Interstate Commerce Commission, 52 App. D. C. 221, and *Interstate Commerce Commission* v. *United States ex. rel. Capital Grain & Feed Company,* 59 App. D. C. 118. (R. 50.) The opinion by the Court of Appeals has not been published but will be found on pages 53–59 of the record.

Jurisdiction

The order of the Supreme Court of the District of Columbia denying the petition for a writ of mandamus was entered October 4, 1932. (R. 50.) From this order an appeal was prosecuted to the Court of Appeals of the District of Columbia, which on January 30, 1933, made its orders and handed down its opinion reversing the judgment of said lower court. (R. 59.) The jurisdiction of this Court is invoked under subsection (a) of Section 240 of the Judicial Code as amended and reenacted by the Act of February 13, 1925. (C. 285, 43 Stat. 936, 938.)

Statement of the case

The Court is respectfully referred to the statement of the case contained in the petition for writ of certiorari above given.

The statutes

The pertinent provisions of the Interstate Commerce Act are set forth in the appendix, *infra,* pages 18 to 23.

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ARGUMENT

1. The case involves a question of general importance

A more important question in the field of Federal regulation can not be readily conceived than that of whether the Interstate Commerce Commission, in a proceeding in which it has taken jurisdiction and exercised the authority duly conferred upon it by statute, can be compelled by mandamus to make an award of reparation in favor of a complainant whom the Commission finds has been subjected to the payment of charges which are unduly prejudicial as to it, and where the Commission makes the further finding that "the record will not support an award of reparation based on the undue prejudice found to exist". (R. 36.)

It has been settled by this Court that the determination by the Commission as to whether or not a shipper has been wronged by the exaction of an unreasonable or discriminatory rate involves the exercise of judgment or discretion. *Great Northern Ry. Co.* v. *Merchants Elevator Co.*, 259 U. S. 285, 291. Likewise, it has been settled by decisions of this Court that, before a party can recover damages for a violation of the Act, it is not sufficient to show merely the wrong of the carrier; it must be also shown that such wrong has resulted in injury to the person seeking damages. *Parsons* v. *Chicago & North Western Ry. Co.*, 167 U. S. 457, 460. The theory of the Court of Appeals appears to be that, after the Commission had found that

the Lumber Company had been unduly prejudiced by the payment of charges from Tioga higher than were collected on like traffic from the Allingdale group, the complainant was entitled as a matter of law and regardless of whether it had been damaged in the premises, to an award of reparation measured by the amount that the Tioga rates exceeded the contemporaneously applicable Allingdale group rates. This holding, however, in our opinion conflicts with the decision of this Court in *Pennsylvania Railroad Co.* v. *International Coal Co.*, 230 U. S. 184, a decision greatly relied on by petitioner in the Court of Appeals, and which that Court in its opinion fails to mention.

In that case the coal company proved that during the period of time extending from April, 1899, to April, 1901, it and its competitors paid to the carrier the same rates for the transportation of coal from points in the Clearfield district, Pennsylvania, to certain destination points, and that, while the carrier afterwards refunded to said competitors certain percentages of the rates paid by them, it refused to make like refunds to the coal company. The latter contended that it was entitled to recover the amount of the refunds the carrier had refused to pay, and this contention was upheld by the Circuit Court and the Circuit Court of Appeals. In reversing the judgment of the latter court, this Court said:

> The statute gives a right of action for *damages* to the *injured* party, and by the

> use of these legal terms clearly indicated that the damages recoverable were those known to the law and intended as compensation for the injury sustained. It is elementary that in a suit at law both the fact and the amount of the damage must be proved. And although the plaintiff insists that in all cases like this the fact and amount of the pecuniary loss is matter of law, yet this contention is not sustained by the language of the act, nor is it well founded in actual experience, as will appear by considering several usual and everyday instances suggested by testimony in this record. (Id. 204.)

After showing the results which would follow from the application of the rule contended for by the coal company, the Court used the following language:

> To adopt such a rule and arbitrarily measure damages by rebates would create a legalized, but endless, chain of departures from the tariff; would extend the effect of the original crime, would destroy the equality and certainty of rates, and, contrary to the statute, would make the carrier liable for damages beyond those inflicted and to persons not injured. The limitation of liability to the persons damaged and to an amount equal to the injury suffered is not out of consideration for the carrier who has violated the statute. On the contrary, the act imposes heavy penalties, independent of

the amount of rebate paid, and as each shipment constitutes a separate offense, the law in its measure of fine and punishment is a terror to evil doers. But for the public wrong and for the interference with the equal current of commerce these penalties or fines were made payable to the Government. If by the same act a private injury was inflicted a private right of action was given. But the public wrong did not necessarily cause private damage, and when it did, the pecuniary loss varied with the character of the property, the circumstances of the shipment and the state of the market, so that instead of giving the shipper the right to recover a penalty fixed in amount or measure, the statute made the guilty carrier liable for the full amount of damages sustained—whatever they might be and whether greater or less than the rate of rebate paid. (Id. 206.)

* * * * *

In view of the express provisions of Section 8 of the Act to Regulate Commerce, it was error to refuse to charge that "to entitle the plaintiff to recover, the jury must be satisfied that it sustained some loss or injury due to the fact that the defendant was carrying at the same time at lower rates coal shipped by other shippers." The judgment of the Circuit Court of Appeals is reversed and the case remanded to the District Court, with directions to grant a new trial. (Id. 207–208.)

It thus appears to us that the question of damage presented to the Commission for determination was not one of law, but one of fact; and that, in the exercise of its jurisdiction, the Commission determined that question, after an exercise of the discretion necessarily involved in such a determination.

2. The decision of the Court of Appeals of the District of Columbia is in conflict with prior decisions of that Court, and inconsistent with analogous decisions of this Court

It seems clear to the petitioner that the action of the Court of Appeals in directing the writ of mandamus to issue under the circumstances of this case is to compel the Commission to award reparation contrary to its judgment and discretion; in other words, to convert the writ into performing the functions of an appeal or a writ of error, which this Court has repeatedly held may not be done.

In *Interstate Commerce Commission* v. *Waste Merchants' Association,* 260 U. S. 32, this Court held that mandamus would not lie to compel the Commission to set aside its decision denying reparation to certain shippers by certain carriers because of loading services which, it was claimed, the carrier failed to perform under its tariffs, and which the shippers were thus obliged to perform. In disposing of the case, this Court said:

> We have no occasion to consider the merits of the controversy before the commission.

That it did not dismiss the complaint for lack of jurisdiction is clear. It heard the case fully. It found that the rates charged were not unreasonable or discriminatory in violation of the commerce act, nor unreasonable for the service actually performed, in violation of the Federal control act. It found that the conditions complained of were an incident of the World War; that the arrangement for loading was a voluntary one beneficial to complainants' members; that there was no provision in the tariffs for allowance to shippers who load cars; and that, therefore, such allowance could not legally be made by the carriers. The commission dismissed the complaint because it held that the petitioners were not entitled to relief. *Waste Merchants' Association* v. *Director General,* 57 I. C. C. 686.

Petitioners sought in the proceeding to set aside the adverse decision of the commission on the merits and to compel a decision in their favor. The Court of Appeals granted the writ. This was error. Mandamus can not be had to compel a particular exercise of judgment or discretion. *Riverside Oil Co.* v. *Hitchcock,* 190 U. S. 316; *Ness* v. *Fisher,* 223 U. S. 683; *Hall* v. *Payne,* 254 U. S. 343; or be used as a writ of error, *Commissioner of Patents* v. *Whiteley,* 4 Wall. 522. The case at bar is not like *Interstate Commerce Commission* v. *Humboldt S. S. Co.* 224 U. S. 474, and *Louisville Cement Co.* v. *Interstate Commerce Commis-*

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> *sion,* 246 U. S. 638, where the commission had wrongly held that it did not have jurisdiction to adjudicate the controversy; nor is it like *Kansas City Southern Ry. Co.* v. *Interstate Commerce Commission,* 252 U. S. 178, where the commission wrongly refused to perform a specific peremptory duty prescribed by Congress. (Id. 34–35.)

In *Donner Steel Company* v. *Interstate Commerce Commission,* 285 Fed. 955, the Court of Appeals of the District followed this Court's ruling in the *Waste Merchants' case, supra.* In the course of its opinion in the *Donner Steel case,* the Court of Appeals held:

> * * * It is too well settled to require discussion that the writ of mandamus cannot be converted into a writ of error, for the purpose of reviewing errors of law committed by a tribunal whose jurisdiction to make the order or judgment complained of is conceded. * * *

A motion for writ of certiorari to review this decision was denied by this Court. (270 U. S. 651.) There is a close analogy between the *Donner Steel Company case,* and this case, which the Court of Appeals in its decision herein has recognized. (R. 56.)

In the *Donner Steel Company case* (57 I. C. C. 745) the Commission found no violation of Section 1 of the Act, but did find that the practice of the carriers in spotting cars, or making allowances

therefor, to complainant's competitors in the Buffalo rate district "has been, is, and for the future will be, unduly prejudicial to complainant, in violation of Section 3 of the Act." The commission further found (p. 752) that the Steel Company had not "shown that its profits would have been any greater had the existing discrimination been removed, or that it has suffered any damage of which such discrimination and prejudice are the proximate cause." The efforts of the Donner Steel Company to get this alleged inconsistency corrected by mandamus were unsuccessful. (See 285 Fed. 955; 270 U. S. 651.)

In the *Birch Valley Lumber Company case* (144 I. C. C. 419) the Commission found that the rates attacked "were not and are not unreasonable" (R. 36), in violation of Section 1 of the Act, but that such rates "were, are, and for the future will be unduly prejudicial to complainant and unduly preferential of its competitors in the same general origin territory to the extent that they exceeded, exceed, or may exceed the rates contemporaneously maintained on like traffic from the group which includes Allingdale, W. Va." (R. 36), that is, that they violated Section 3. For this violation of the Act, the Commission found, as it found in the *Donner Steel case,* that "the record will not support an award of reparation based on the undue prejudice found to exist." (R. 36.)

In our view, two situations could hardly be more identical, and it is submitted that the same result, the dismissal of the petition, should be reached in this case as was reached in the *Donner Steel Company case*. There is no showing here, any more than there was in the *Donner Steel Company case*, that respondent's profits would have been any greater had the existing discrimination been removed. The mere statement of the Commission, emphasized by respondent, that "there appears to be no question that complainant and intervener are forced to base their prices on the group rates and absorb the charges of the S. C. & M." (R. 36) is not the clear and definite showing of injury necessary to support an award of reparation, especially when it is considered in connection with the prior statement of the Commission, that "mills on the other short lines are not shown to fix the prices at which complainant sells its lumber" (R. 36). For aught that appears, respondent's operating and labor costs as well as other costs incurred by it in producing its lumber, may be such that, even with the additional $15 charge it had to pay to the S. C. & M., it could still do business on even terms with its competitors. The record upon which the Commission based its order is not before the Court. Under these circumstances, this Court has held that the Commission's findings, which would include its finding that "the record will not support an award of reparation based on the undue prejudice found

to exist," must, in the absence of the evidence, be deemed to be in accord with the evidence. (See *Louisiana & Pine Bluff Ry. Co.* v. *United States,* 257 U. S. 114, 116; *Spiller* v. *Atchison, T. & S. F. Ry. Co.,* 253 U. S. 117, 125.)

It is also believed that the decision of the Court of Appeals is in conflict with its decisions in *Bartlesville Zinc Company* v. *Interstate Commerce Commission,* 30 Fed. (2d) 479, certiorari denied 279 U. S. 856, and *Interstate Commerce Commission* v. *United States ex rel. Capital Grain & Feed Company,* 35 Fed. (2d) 1012.

Finally, it will be observed that the order of the Commission complained of in this proceeding is what is known as a negative order, the Commission, after hearing and in accordance with the pertinent facts as found by it, having declined to award the reparation asked for by respondent. Compare *Procter & Gamble Company* v. *United States,* 225 U. S. 282. Orders of this kind have been heretofore regarded as nonreviewable and unless the petition is granted and the decision of the lower court corrected, petitioner believes that great confusion will result from the decision of the Court of Appeals in this case.

For the foregoing reasons it is respectfully submitted that the petition should be granted.

DANIEL W. KNOWLTON,
EDWARD M. REIDY,
For Interstate Commerce Commission.

MARCH, 1933.

APPENDIX

The Interstate Commerce Act provides:

Section 1 (5):

All charges made for any service rendered or to be rendered in the transportation of passengers or property or in the transmission of intelligence by wire or wireless as aforesaid, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful: * * *.

Section 3 (1):

That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Section 6 (1):

That every common carrier subject to the provisions of this Act shall file with the Commission created by this Act and print and keep open to public inspection schedules showing all the rates, fares and charges for transportation between different points on its own route and between points on its own

route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print and keep open to public inspection as aforesaid, the separately established rates, fares, and charges applied to the through transportation. The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be kept posted in two public and conspicuous places in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected. The provisions of this section shall apply to all traffic, transportation, and facilities defined in this Act.

Section 8:

That in case any common carrier subject to the provisons of this Act shall do, cause to be done, or permit to be done any act, matter,

or thing in this Act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this Act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this Act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

Section 9:

That any person or persons claiming to be damaged by any common carrier subject to the provisions of this Act may either make complaint to the Commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this Act, in any district or circuit court of the United States of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for he or they will adopt. In any such action brought for the recovery of damages the court before which the same shall be pending may compel any director, officer, receiver, trustee, or agent of the corporation or company defendant in such suit to attend, appear, and testify in such case, and may compel the production of the books and papers of such corporation or company party to any such suit; the claim that any

such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

Section 13 (1):

That any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier, complaining of anything done or omitted to be done by any common carrier subject to the provisions of this Act, in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the Commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

Section 15 (1):

That whenever, after full hearing, upon a complaint made as provided in section 13 of this Act, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected, by any common carrier or carriers subject to this Act for the transportation of persons or property or for the transmission of messages as defined in the the first section of this Act, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this Act, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this Act, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum or maximum and minimum, to be charged (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist,

and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation or transmission other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.

Section 16 (1):

That if, after hearing on a complaint made as provided in section thirteen of this Act, the Commission shall determine that any party complainant is entitled to an award of damages under the provisions of this Act for a violation thereof, the Commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

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